



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 598**

**IN THE MATTER  
OF  
JOSEPH F. DONOVAN**

## **DISPOSITION AGREEMENT**

The State Ethics Commission ("Commission") and Joseph F. Donovan ("Donovan") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On December 16, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Donovan. The Commission has concluded its inquiry and, on November 17, 1999, found reasonable cause to believe that Donovan violated G.L. c. 268A, §19.

The Commission and Donovan now agree to the following findings of fact and conclusions of law:

1. Donovan is and has been since his appointment in March 1993, a City of Brockton plumbing and gas fitting inspector. As such, Donovan is a municipal employee as that term is defined in G.L. c. 268A, §1. Donovan's position is salaried and has been full time since January 1994.

2. As a plumbing and gas fitting inspector, Donovan performs preliminary and final inspections of plumbing and gas fitting work done in Brockton to ensure compliance with the state plumbing and gas fitting code.

3. Donovan's son Joseph E. Donovan ("Joseph") is a licensed plumber and gas fitter. Joseph owns a business, Donovan Plumbing, and has done plumbing and gas fitting for fifteen years in Brockton and neighboring communities.<sup>1/</sup>

4. Donovan inspected Joseph's plumbing and gas fitting work on thirty occasions between January 1994 and July 13, 1998.<sup>2/</sup> In each case, Donovan determined whether his son's work complied with the state code and signed the building permit card indicating his inspection of the work.<sup>3/</sup>

5. The Commission is aware of no evidence indicating that any of the work performed by Joseph and inspected by Donovan was not fully up to code.

6. Donovan self-reported his inspection of his son's work to the Commission and fully cooperated with the Commission's investigation.

7. Except as otherwise permitted by that section, G.L. c. 268A, §19 prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge a member of his immediate family has a financial interest.<sup>4/</sup>

8. The plumbing and gas fitting inspections were particular matters.<sup>5/</sup> Joseph had a financial interest<sup>6/</sup> in each of these particular matters.

9. Donovan participated<sup>7/</sup> in the particular matters of the inspections by performing the inspections. Each time Donovan inspected his son's work, Donovan knew that his son had a financial interest in the inspection.

10. Therefore, by performing the inspections as described above, Donovan participated as a municipal employee in particular matters in which to his knowledge an immediate family member<sup>8/</sup> had a financial interest. Each time he did so, Donovan violated §19.

In view of the foregoing violations of G.L. c. 268A by Donovan, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Donovan:

(1) that Donovan pay to the Commission the sum of three thousand dollars (\$3,000.00) as a civil penalty for violating G. L. c. 268A §19;<sup>9/</sup> and

(2) that Donovan waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: November 23, 1999**

<sup>1/</sup>Donovan does not have any financial interest in Donovan Plumbing.

<sup>2/</sup>Donovan's co-workers issued permits and collected fees for this work. Donovan did not issue the permits for his son's work or receive permit fees from his son.

<sup>3/</sup>In a few instances when the building permit card was not at the site, Donovan noted the inspection in his log book.

<sup>4/</sup>None of the G.L. c. 268A, §19 exemptions apply in this case.

<sup>5/</sup>"Particular matter" means any judicial or other proceeding, application submission, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

6/"Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133, 345 N.E. 2d 888 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. See *EC-COI-84-96*.

7/"Participate" means participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, §1(j)*.

8/"Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. *G.L. c. 268A, §1(e)*.

9/The Commission has statutory authority to impose a fine of up to \$2,000 for each violation of *G.L. c. 268A*. While each inspection of his son's work was a separate violation of §19 for which a separate fine of up to \$2,000 could have been imposed, the Commission has chosen to impose a \$3,000 fine for Donovan's course of conduct in light of his self-reporting of his conduct and his full cooperation with the Commission's investigation.